

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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NEW ENGLAND CARPENTERS )  
HEALTH BENEFITS FUND; PIRELLI )  
ARMSTRONG RETIREE )  
MEDICAL BENEFITS TRUST; )  
TEAMSTERS HEALTH & WELFARE )  
FUND OF PHILADELPHIA AND )  
VICINITY; and PHILADELPHIA )  
FEDERATION OF TEACHERS HEALTH )  
AND WELFARE FUND, )  
Plaintiffs, )  
v. )  
FIRST DATABANK, INC., a Missouri ) Civil Action No. 1:05-CV-11148-PBS  
Corporation; and McKESSON )  
CORPORATION, a Delaware Corporation, )  
Defendants. )  
\_\_\_\_\_  
)

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PROPOSED  
CASE MANAGEMENT ORDER NO. 1**

Plaintiffs submit the following Memorandum in Support of Proposed Case Management Order No. 1:

**A. Plaintiffs' Proposed a Tight But Attainable Schedule**

Although this case deals with one aspect of the setting of the Average Wholesale Price (“AWP”), it is a relatively simple case compared to the main AWP case. There are just two defendants (verses over 40), the time period is late 2001 to March 2005 (versus 14 years, or

1991-2005), and the illegal activity arises from basically one event, the raising of the WAC-to-AWP spread.

Further, the issues that made AWP complex in this case don't exist. There will be no evidence that TPPs or consumers knew of the phony price hike, or that there were "negotiations" concerning the hike. To the extent TPP contracts are based upon AWP and the McKesson Scheme inflated AWP, each member of the class is injured. Rebates, an issue in AWP, are not an issue here. Discovery will focus mainly on the facts relating to the 2002-2004 5% increase in the WAC-AWP spread.

**B. The First DataBank Negotiations are Not a Reason to Delay**

During the meet and confer McKesson suggested that until the parties know if First DataBank has settled, it is premature to set a schedule. First DataBank will respond or move against the Complaint by February 6, 2006. First DataBank will be bound by any schedule the Court sets until it settles, if First DataBank does so, just like any other party. This is not grounds to delay setting a schedule or setting any of the relevant dates.

**C. The Newly Filed California Case Is Not a Reason to Delay Setting a Schedule**

In the parties meet and confer McKesson raised the potential filing of a California action as a basis to delay setting a schedule. As the Court may recall, during the argument on the motion to dismiss, McKesson claimed the Court needed to apply the law of 50 states. However, in this case both defendants are based in California. California courts have applied California law on a nationwide basis. As we informed the Court we would, plaintiffs have filed a new case in California. Plaintiffs will move to have it transferred to this Court and will use that complaint as the vehicle to move for class certification. However, the complaint is basically identical to the current complaint. The factual allegations are the same. Therefore, there is not need to wait for its transfer in order to set a schedule.

## CONCLUSION

For the foregoing reasons plaintiffs move for entry of Proposed Case Management Order No. 1.

DATED: February 2, 2006

By /s/ Steve W. Berman

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**CERTIFICATE OF SERVICE**

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 2nd day of February, 2006.

/s/ Steve W. Berman

Steve W. Berman

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**PLAINTIFFS' PROPOSED CASE MANAGEMENT ORDER NO. 1**

IT IS HEREBY ORDERED as follows:

1. All parties shall make Rule 26 disclosures by March 1, 2006.
2. Fact discovery to be completed by August 17, 2006.
3. Plaintiffs' Expert Report due by August 17, 2006.
4. Defendants' Expert Report due by September 18, 2006.
5. Plaintiffs' Expert Reply due by October 2, 2006.
6. Plaintiffs' motion for class certification to be filed by June 1, 2006.

7. Defendants' opposition due June 15, 2006.
8. Plaintiffs' reply due June 29, 2006.
9. Class briefs shall be limited to 30 pages on opening, 30 in opposition, and 15 in reply. Appendices, including those referred to in expert reports shall be reasonable in size.
10. Trial: February \_\_\_\_\_, 2007.

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PATTI B. SARIS  
United States District Judge

**CERTIFICATE OF SERVICE**

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 2<sup>nd</sup> day of February, 2006.

/s/ Steve W. Berman

Steve W. Berman